inquiry which is of such a nature that its decision is a nullity. In the instant case, Wong was transferred out of the Accounts Department on the same day he was asked to attend a preliminary inquiry with regard to the discrepancies in the accounts. On that day (December 22, 1983) it had not yet been determined who was at fault because the inquiry had not even commenced. It cannot therefore be said that he was being punished or humiliated. The Bank had contended all along that the transfer was an interim measure to facilitate investigation of the falsifications. The Court has not given any reason why it did not accept the explanation given by the Bank. The issues of victimisation, status, dignity and even unfairness did not arise out of the act of the transfer *from* the Accounts Department on December 22. The Court asked itself the wrong questions because it did not address itself to the sole question before it, *viz.* whether the Bank had the right to transfer Wong from the Accounts Department on December 22. The Bank clearly had the right under Article 16(1) of Award 117/82. It need not even give an explanation.

In my view the Court fell into the error of asking itself the wrong question by an over emphasis on the aftermath of the transfer. It is said that Wong had been transferred to an inferior post. In doing so the Court overlooked the fact that the posting to the Credit Administration Department was itself an interim measure and had to be carried out at short notice pending the outcome of the inquiry. Indeed the Court in paragraph 3 of the Award found that the Minister had referred the dispute to the Court even before the Bank had made a decision on the result of the inquiry. Be that as it may, Wong was not asked to do a menial job. In fact, at the Credit Administration Department his job was to oversee the overdraft accounts of the Bank's 25 branches. Further, Award 117/82 does not grade any particular clerical job, but grades the clerks.

Finally, the order of reinstatement itself is superfluous because Wong has never lost his job as a Special Grade Clerk in the Bank; and the order of reinstatement as Book-Keeper is contrary to Article 16(1) of Award 117/82 as it deprives the Bank's right to transfer its employees at its sole discretion. In my judgment, for the reasons stated and in all the circumstances of this case, the decision of the Industrial Court is a nullity and I accordingly grant *certiorari* to quash the Award of the Industrial Court with costs.

Application allowed.

Solicitors: *Shook Lin & Bok; Aziz Abdullah & Co.*

MUNIANDY & ANOR. v. MOHAMED BIN ABDUL GHANI

[O.C.J. (Eusoff Chin J.) April 23, 1985]

[Kuala Lumpur – Civil Suit No. P640 of 1980]

Tort – Negligence – Personal injuries – Whether defendant driver liable.

Damages – Multiple injuries – Assessment of quantum based on 100% liability.

Road Traffic – Robot lights and traffic warden's directions – Which prevail – Traffic Signs (size, colour and type) Rules, 1959, rr. 16 & 17 – Highway Code, para. 17.

The plaintiff, a carpenter and rider of a motor-cycle sued the defendant, driver of a motor-car, for damages arising out of a road accident on the morning of February 20, 1972, when the plaintiff was proceeding from the direction of Kebun Bunga to go to Segambut. At the junction with Jalan Semantan, his motor-cycle collided into the motor-car driven by the defendant. The junction of Jalan Duta and Jalan Semantan was controlled by robot lights. The plaintiff claimed that as he was approaching the junction the robot lights were green. He was following another motor-cycle which was 30 ft. ahead. When he was crossing the junction the defendant's car came from the opposite side and turned to its right and the plaintiff crashed into the left front side of the defendant's car. The plaintiff was admitted for 14 days in the hospital and he sustained the following injuries: (1) Laceration of angle of mouth and right cheek, haematoma of right eye, (2) Fracture lower 1/3 of the right radius with dislocation of the ulna, (3) loss of 5 front teeth, and had one tooth fractured, (4) fractured bones at 3 places – mandible, left zygoma (cheek) and middle third of face.

The fracture of the right radius had united with slight overlap at the fracture site. There is 1/6" shortening of the right arm which is permanent. There is likely to be permanent limitation of the rotation of the right forearm by 20° as there had been a dislocation as well as a fracture. The wasting of the right forearm could be improved by physiotheraphy. The plaintiff was earning $600 p.m. before the accident. He claimed he could not work for two years after the accident.

The defendant denied liability. He said he was stopped by a traffic warden, who directed the traffic from the defendant's side to proceed into Jalan Semantan. The defendant felt safe to move ahead, when the plaintiff's motor-cycle collided into his car.

Held: (1) the defendant was not liable for the accident;

(2) however, had the plaintiff succeeded in his claim on a 100% basis, damages would be awarded as follows:

(a) Special damages:

i)	item (a) to (d) as agreed by the parties	$ 200.00
ii)	Pre-trial loss and partial loss of income. 3% interest p.a. from date of accident to date of trial.	$17,200.00
(2)	General damages for pain and suffering and loss of amenities. 6% interest p.a. from date of service of writ to date of trial.	$43,100.00

(3) where the robot lights at a road junction are functioning a policeman's (or traffic warden's) direction overrides the direction given by the lights.

[*Editorial Note:* The plaintiff has appealed to the Supreme Court, *vide* Mahkamah Agung Rayuan Civil No. 182/85.]

Cases referred to:

(1) *Rosli bin Hashim* v. *Salleh bin Mohamed Yop* [1979] 1 M.L.J. xxxix.
(2) *Ngooi Ku Siong & Anor. & Aidi Abdullah* [1985] 1 M.L.J. 30.

CIVIL SUIT.

S. Kanagasabapathi for the plaintiff.
Ismail Sabri for the defendant.

Cur. Adv. Vult.

Eusoff Chin J. : It was agreed by the parties to this suit that on February 20, 1972 the plaintiff was riding motor-cycle No. BAY 7041 along Jalan Duta from the direction of Kebun Bunga to go to Segambut. At the junction with Jalan Semantan, he collided into motor-car No. WH9114 driven by the defendant.

The junction of Jalan Duta and Jalan Semantan was controlled by robot lights. In his evidence, the plaintiff said that at about 7.45 a.m. to 8.00 a.m. he was approaching that junction. When he was about 100 feet before reaching that junction, he saw that the robot lights at the junction were green, indicating that he could cross the junction. He was following another motor-cycle which was 30 feet ahead of him. When he was crossing the junction the defendant's car came from the opposite side and turned to its right and the plaintiff crashed into the left front side of the defendant's car. He suffered injuries.

The plaintiff said that he had been using this road frequently at about the same time. The traffic at that junction was always heavy. On the day of the incident he had seen a traffic warden standing somewhere in the middle of the junction near point 'F' on the sketch plan, (pg. 1 of SAB). The traffic warden's back was towards the plaintiff. The plaintiff admitted that at about that time, there was very often a traffic warden there controlling the traffic despite the robot lights which were left working. He said that if a traffic warden was there, he had to follow the traffic warden's direction. According to the plaintiff he first saw the defendant's car when he was about 10 feet from the car.

The defence called the traffic warden (DW2) who was on duty at that junction when the accident happened. DW2 said that on that day he started duty at about 7.30 a.m. at that junction. He was in uniform and alone there. Up to that day he had been a traffic warden for 4½ years. Before the accident happened, the traffic coming from Segambut side had already stopped. Then he stopped all traffic coming from the direction of Kebun Bunga (the opposite direction) and the traffic on Jalan Semantan. He then turned and faced the traffic coming from the direction of Segambut and gave the direction for them to move and proceed into Jalan Semantan, which led to Jalan Beringin. As the traffic from the direction of Segambut turned to their right DW2 faced Jalan Semantan.

Two or three cars had entered Jalan Semantan. The defendant's car was 3rd or 4th in the row. DW2 then heard the sound of a collision. He saw that the plaintiff's motor-cycle had collided into the defendant's car. DW2 himself did not see how the accident happened. He agreed that the roads at that junction at that time was heavy with traffic.

The defendant (DW1) said he was going to office at the Petaling Jaya Municipality that morning to work. He had stopped behind two other cars which had been stopped by a traffic warden. DW1 said that a traffic warden would be there daily at that time to control the traffic. The traffic coming from the opposite direction had been stopped. The warden then directed the traffic from DW1's side to proceed into Jalan Semantan. The two cars ahead of him moved forward and he followed. He was then concentrating on the two cars ahead of him, and also looking in the direction of Jalan Semantan (to his right) to enter it. He said that as there was a traffic warden there he felt safe to move. All of a sudden there was an impact on

his left front side of his car. He saw a motor-cycle had collided into his car. His car had to be towed away as the motor-cycle had also hit his car's front left wheel and the shock absorber was damaged.

Liability:

I quite appreciate the fact that some drivers when approaching a road junction controlled by robot lights tend to hurry and increase their speed to cross the junction when they see the lights are green and therefore in their favour. A regular commuter approaching a particular road junction at a certain time may know that a traffic policeman/warden may be there controlling the flow of traffic and so approaches the junction with caution despite the robot lights being in his favour. However, a non-regular commuter may not be suspecting that a traffic policeman/warden may be controlling traffic at the junction. As he approaches the junction, a greater part of his attention may be focussed on the robot lights. It may be too late for him to stop when he suddenly sees a traffic policeman there directing traffic at the junction. To avoid any accident happening at a road junction controlled by robot lights, I think a better practice would be to switch off the robot lights, so that all drivers approaching the junction would slow down and proceed with caution. The traffic policeman/warden controlling traffic at that junction should station himself in such a position as to make himself visible to all traffic on the roads leading to the junction. This way, a lot of pain and suffering and even loss of lives due to road accidents at such road junction may be avoided.

In the case before me, I can find no liability in any way on the defendant for the accident. The defendant had stopped behind two cars. He was watching the traffic warden for the signal to proceed. He had seen the traffic warden stopping the vehicles coming from the opposite direction. He was confident he could proceed in safety. The warden had directed the traffic in his (defendant's) line to move into Jalan Semantan. The two cars ahead of him proceeded to turn to the right into Jalan Semantan. He had followed them. His attention was focussed in the direction to where he was going, and on the two cars ahead of him. He had proceeded for about 45 feet into the junction and was turning to his right when suddenly the plaintiff's motor-cycle collided into his car. The plaintiff on the other hand had entered the junction for a distance of 70 feet before he collided into the defendant's car. He must have travelled at a speed faster than the defendant, or else he must have been already in the junction when the defendant started to move into the junction. In any event, the plaintiff was going straight. He must have seen the vehicles coming from the opposite direction turning to their right in procession. Those cars coming from the opposite direction could not have turned suddenly to their right because they had just started to move forward. The plaintiff either could not or did not see that the warden was directing the vehicles to move into Jalan Semantan. The plaintiff said that all he could see was the warden standing there with his back towards him (the plaintiff) and doing nothing. There is no reason why I should not believe the defendant and the warden when they said that all traffic coming from the direction of Kebun Bunga had stopped, and the plaintiff, his attention being focussed on the robot lights, proceeded on because either he did not or could not see the traffic warden and also because he saw the lights were in his favour. In any event had he been looking ahead of him as soon as he entered the junction, he must have seen the cars cutting across the road to his left into Jalan Semantan. Para. 25 of the Highway Code states that "a driver must stop if by so doing he can avoid an accident or even the risk of an accident. Often a driver sees a situation building up which may lead to an accident but goes obstinately on, secure in the thought that he is in the right until it is too late to take any effective action".

I believe that the plaintiff did not look to where he was going. If he had done so, he could have seen the cars turning into Jalan Semantan because the road was straight. Otherwise he might have seen those cars turning into Jalan Semantan but took no action to stop his motor-cycle because the lights were in his favour, and therefore concluded that the cars turning to Jalan Semantan should give way to him.

According to *Mazengarb's* Negligence on the Highway, 4th edn., at page 170, under the heading "Act of Third Party":

> "When the driver of one vehicle moves forward with the lights in his favour and is struck by another vehicle moving at right angle to him in response to a signal from a police constable, neither driver may be to blame for injuries sustained by a passenger in one vehicle".

It was suggested by the defence counsel that it was the traffic warden who was to blame for causing the accident. It is therefore necessary for me to consider the question *i.e.* where the robot lights at a road junction are functioning, does a policeman's (or traffic warden's) direction override

the directions given by the lights. The law on the use and functions of, and directions given by robot lights are found in rules 16 and 17 of the Traffic Signs (size, colour and type) Rules 1959, and paragraph 17 of the Highway Code. A person driving or propelling any vehicle on the road has to stop when the lights facing him show red, and to proceed only when they show green. On the other hand, there is section 66 of the Road Traffic Ordinance 1958 which empowers a police officer or a traffic warden in uniform in the execution of his duty to regulate traffic on any road. But when all the robot lights regulating traffic at a junction are properly functioning, and there is a police officer or traffic warden in uniform giving directions contrary to those given by the robot lights, whose directions should prevail? There is no provision under the road traffic law to say that the police officer's directions override the directions given by the light signals. Such a situation may lead to utter confusion. The general public, however, have come to accept that faced with such a situation, the police officer's (or traffic warden's) directions should be followed, perhaps it is because the officer can issue a summons whereas the robot lights cannot do so. My view, on the principle of logic and common sense, is that since the officer is the intelligent of the two, and is able to see and assess the traffic situation at any given moment, he ought to be followed, though as I have earlier said, the better procedure, to avoid confusion, is to switch off the robot lights before the officer takes over the control of traffic at a road junction.

Although I had found that the defendant was not liable for causing the accident, and I had dismissed the plaintiff's claim with costs, had the plaintiff succeeded in his claim, on a 100% basis, I would have proceeded to consider the damages that ought to be awarded to the plaintiff.

The plaintiff was admitted for 14 days in the hospital, from February 20, 1979 to March 5, 1979. He sustained the following injuries:

1) Lacerations of angle of mouth and right cheek, haematoma right eye.
2) Fracture lower 1/3 of the right radius with dislocation of the ulna.
3) Loss of five front teeth, and had one tooth fractured.
4) Fractured bones at three places – mandible, left zygoma (cheek) and middle third of face.

The fracture of the right radius had united with slight overlap at the fracture site. There is 1/6" shortening of the right arm which is permanent. There is likely to be permanent limitation of the rotation of the right forearm by 20° as there had been a dislocation as well as a fracture. The wasting of the right forearm could be improved by physiotheraphy.

In *Rosli bin Hashim* v. *Salleh bin Mohamed Yop*,[1] the court awarded $1,000 for loss of each tooth. I would award $1,000 for loss of each tooth, and for the five teeth, I award $5,500 and for a fracture of one tooth $600.

For the three fractures to the jaw bones, both counsel agreed it to be $8,000 per fracture making a total of $24,000. But for overlapping I would scale it to $20,000.

For the fracture of the radius and ulna plus 1/6" shortening, I would award $15,000. The Federal Court had confirmed a similar award for such fractures in *Ngooi Ku Siong & Anor.* v. *Aidi Abdullah*.[2]

For the lacerations and haematoma, I would award $2,000.

Total award for pain and suffering is $43,100.

For special damages, both counsel had agreed that for items (a) to (d) in the Statement of Claim at page 8 of the Bundle of Pleadings, to be $200. Item (e) there is for pre-trial loss of earnings.

The plaintiff was a carpenter, earning $25 per day at the time of the accident, and working an average of 25 days per month, which comes to about $625 per month. He had claimed that his average monthly earning was $600. The defence counsel had not disputed the fact that the plaintiff was a carpenter, but suggested that the plaintiff's earning was $400 per month. I find no reason to doubt that the plaintiff was earning $600 per month before the accident happened. He claimed he could not work for two years after the accident. The defence counsel suggested that the plaintiff was unable to work for six months from the date of accident. The plaintiff's counsel had agreed to this suggestion. I would award total loss of income for six months after the accident which is $600 x 6 = $3,600. The specialist report dated August 26, 1980 had stated that the plaintiff's right forearm had wasted but the wasting could be improved with physiotheraphy and exercises. I find that even

if the plaintiff could resume his work as a carpenter six months after the accident, he would not be able to function as he could before the accident. He had worked for various employers after the accident, initially earning between $10 to $15 per day.

Now he is earning $30 per day. I would estimate his loss of income up to date of trial to average $200 per month, and for 68 months would come to $13,600. Pre-trial loss of income and pre-trial partial loss of income would total $17,200.

I find there is no loss or any reduction in his future earnings.

To summarise, the damages to be awarded to the plaintiff based on 100% liability on the defendant would be:

1) Special damages:

i)	item (a) to (d) as agreed by the parties	$ 200.00
ii)	Pre-trial loss and partial loss of income	$17,200.00
	3% interest p.a. from date of accident to date of trial.	

2) General damages for pain and suffering and loss of amenities $43,100.00

6 % interest p.a. from date of service of writ to date of trial.

Order accordingly.

Solicitors: *R.K. Nathan & Co.; V.P. Nathan & Partners.*

SENG HUP GUAN CO. v. SRI TINUSA SDN. BHD.

[O.C.J. (Wan Mohamed J.) January 28 & May 9, 1985]
[Sandakan – Civil Suit No. S131 of 1983]

– Arbitration – Application for stay of proceedings – Whether should be allowed – Agreement for arbitration – Arbitration Act, 1952, s.6 – R.H.C. 1980, O.69, r.3(1).

Practice and Procedure – Application for stay of proceedings – Whether should be allowed.

The defendants applied for an order that all further proceedings in and relating to the claim filed by the plaintiffs in this action be stayed, pursuant to the agreement the Arbitration Act, 1952, and pursuant to the agreement between the plaintiffs and the defendants that a dispute between the parties be referred to an arbitrator.

Clause 16 of the said agreement reads: "Any difference, dispute or question which may arise at any time hereafter shall be referred to arbitration in accordance with the law for the time being in force."

The main issue was whether all further proceedings should be stayed.

Held: (1) the parties had clearly agreed that the subject matters be brought and decided by arbitration;

(2) the defendants' application would be allowed in terms as stated in the order.

[*Editorial Note:* The plaintiffs have appealed to the Federal Court against the High Court decision on June 2, 1984.]

SUMMONS-IN-CHAMBERS.

Anthony Roderic Fernandez for the applicants/defendants.

Alex Khoo for the respondents/plaintiffs.

Cur. Adv. Vult.

Wan Mohamed J.: The defendants in this case by way of Summons-in-Chambers apply to the Court for an order that all further proceedings in and relating to the claim filed in by the plaintiffs in this action be stayed, pursuant to section 6 of the Arbitration Act, 1952, Laws of Malaysia, and pursuant to the agreement between the plaintiffs and the defendants that a dispute between the parties be referred to an arbitrator.

The plaintiffs in their Statement of Claim claimed against the defendants for a liquidated sum of money being the balance of timber extraction fees in two separate sums and a further liquidated sum for road construction cost and for damages. There was a contract between the parties that plaintiffs were to extract timbers for the defendants and certain fees would be paid by the defendants to the plaintiffs. The plaintiffs filed the Writ of Summons on August 30, 1983. The defendants duly entered appearance but instead of proceeding with the filing of Statement of Defence, made an interlocutory application under Order 69, rule 3(1) of the Rules of the High Court.

The defendants in the affidavit sworn by their solicitor refers to Clause 16 of the agreement dated December 18, 1982, entered into by the parties as in exhibit marked "A". Clause 16 reads: